

clarified that “this mandate [set forth in Rule 15(a)(2)] is to be heeded.” *Foman v. Davis*, 371 U.S. 178, 182 (1962). “In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, etc.—the leave sought should, as the rules require, be ‘freely given.’” *Id.*

2. Plaintiff seeks leave to amend his complaint for three reasons. First, Plaintiff has dismissed Claims 3 and 4 and therefore wishes to eliminate those claims from his live pleading. Second, Plaintiff wishes to consolidate Claims 8 and 9 so as to combine his claim for breach of the covenant of good faith and fair dealing into his breach of contract claim, in accordance with controlling legal authority. Third, Plaintiff wishes to amend his complaint to plead Claim 12—alter ego—in the alternative.

3. This case is still in its infancy, and the Court has not yet issued an order governing case deadlines pending the resolution of Defendants’ pending motion to dismiss. Plaintiff submits that he has not unduly delayed in seeking to amend his complaint and that his proposed amended complaint would not prejudice Defendants, as the basis for his claims remains the same and, in fact, his amended complaint would streamline—rather than supplement—his claims.

For these reasons, Plaintiff respectfully requests that the Court grant this motion and grant him leave to file his Second Amended Complaint.

Dated: February 28, 2018.

Respectfully submitted,

/s/ Michael W. Ford

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CERTIFICATE OF CONFERENCE

I hereby certify that on February 21, 2018, my associate—Alison P. Henderson—e-mailed a copy of this Motion and proposed amended complaint to Megan Troy, counsel for Defendants. Ms. Henderson and Ms. Troy had numerous conversations via telephone and e-mail following that date regarding the relief sought herein, but Defendants’ counsel was unable to confirm Defendants’ position with respect to the Motion. Therefore, as of the date of this Motion, it is presumed that Defendants are opposed to the relief sought. Should this change, we will promptly advise the Court.

/s/ Emil T. Bayko

Emil T. Bayko

CERTIFICATE OF SERVICE

I hereby certify that on February 28, 2018, a true and correct copy of the foregoing pleading was electronically filed in accordance with the Federal Rules of Civil Procedure and was served via e-mail upon the following counsel of record:

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/s/ Emil T. Bayko

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